UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/31
27 January 1998

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 7 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros, Special Rapporteur, pursuant to Commission resolution 1995/5 and Commission decision 1997/120

CONTENTS

	Paragraphs	Page
Introduction	1 - 7	3
I. ACTIVITIES OF THE SPECIAL RAPPORTEUR	8 - 23	4
A. Implementation of the programme of activities	8 - 10	4
B. Correspondence	11 - 15	4
C. Correspondence regarding mercenary activities against Cuba	16 - 23	7
II. MERCENARY ACTIVITIES IN AFRICAN COUNTRIES	24 - 46	10
A. General aspects	24 - 28	10
B. The case of Sierra Leone	29 - 38	12

GE.98-10297 (E)

CONTENTS (continued)

		Paragraphs	Page
	C. Presence of mercenaries during the armed conflict in the Democratic Republic of the Congo	39 - 42	15
	D. Mercenary activities in the Republic of the Congo	43 - 46	15
III.	PERSISTENCE AND EVOLUTION OF MERCENARY ACTIVITIES	47 - 66	16
	A. Critical analysis of the present situation	47 - 56	16
	B. Current international legislation and its limitations	57 - 66	19
IV.	PRIVATE SECURITY COMPANIES AND MERCENARY ACTIVITIES	67 - 92	22
V.	PRESENCE OF MERCENARIES IN PAPUA NEW GUINEA	93 - 99	29
VI.	CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES	100 - 101	31
VII.	CONCLUSIONS	102 - 113	32
VIII.	RECOMMENDATIONS	114 - 120	34

Introduction

1. In resolution 1995/5 of 17 February 1995, the Commission on Human Rights, inter alia, reaffirmed that the recruitment, use, financing and training of mercenaries should be considered offences of grave concern to all States. The Commission urged all States to prevent mercenaries from using any part of their territory to destabilize any sovereign State and called upon all States that had not yet done so to consider taking early action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Commission decided to extend the mandate of the Special Rapporteur for three years. The Commission also urged all States to cooperate with the Special Rapporteur in the fulfilment of his mandate, in particular by providing credible and reliable information.

2. In decision 1995/254 of 25 July 1995, the Economic and Social Council approved the Commission's decision to extend for three years the mandate of the Special Rapporteur and requested the Secretary-General to provide him with all necessary assistance.

3. At its fifty-third session the Commission on Human Rights decided, without a vote, that, unless otherwise indicated, all special rapporteurs, special representatives, independent experts and working groups entrusted with continuing thematic or country-oriented mandates established by the Commission were expected to report to the Commission at its fifty-fourth session (decision 1997/120).

4. At its fifty-first session, the General Assembly on 12 December 1996 adopted resolution 51/83, in which, inter alia, it urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, were not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or to promote secession or fight the national liberation movements struggling against colonial or other forms of alien domination or occupation. The Assembly called upon all States that had not yet done so to consider taking necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and urged them to cooperate with the Special Rapporteur in the fulfilment of his mandate.

5. The General Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training were causes for grave concern to all States and violated the purposes and principles enshrined in the Charter of the United Nations; and requested the Centre for Human Rights of the Secretariat, as a matter of priority to publicize the adverse effects of mercenary activities on the right to self-determination and, when requested where necessary, to render advisory services to States that are affected by the activities of mercenaries.

6. On 14 November 1997, the General Assembly adopted a draft resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (resolution 52/112) in

which, inter alia, it requested the Special Rapporteur to report, with specific recommendations, his findings on the use of mercenaries to undermine the right of peoples to self-determination to the General Assembly at its fifty-third session. The General Assembly further requested the Secretary-General to invite Governments to make proposals towards a clearer definition of mercenaries (paragraph 7) and the Office of the United Nations High Commissioner for Human Rights to publicize the adverse effects of mercenary activities on the right to self-determination (paragraph 6).

7. Accordingly, pursuant to these provisions, the Special Rapporteur has the honour to submit this report on activities in 1997 for the consideration of the Commission on Human Rights at its fifty-fourth session.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

8. The Special Rapporteur submitted his report (E/CN.4/1997/24) to the Commission on Human Rights on 13 March 1997. While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

9. The Special Rapporteur returned to Geneva on three occasions, from 20 to 23 May, 11 to 15 August and 1 to 5 December 1997, to hold various consultations, to participate in the fourth meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, held from 21 to 23 May 1997, and to draft his report to the General Assembly (A/52/495) and the present report to the Commission on Human Rights.

10. The Special Rapporteur also travelled to New York on 3 November 1997 to present his report to the Third Committee of the General Assembly, and made his presentation on 6 November 1997. While at United Nations Headquarters, the Special Rapporteur had interviews with representatives of various States and members of non-governmental organizations.

B. Correspondence

11. The Special Rapporteur sent a communication on 4 June 1997 to all States Members of the United Nations, requesting the following:

(a) Information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information available to their Government on participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations;

(c) Information on the possible existence of mercenary activities in the territory of another country from which actions were carried out that affected or potentially affected the sovereignty of their country, the exercise of the right of their people to self-determination, and the enjoyment of human rights by their population;

(d) Information on the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband;

(e) Information on domestic legislation currently in force and on international treaties to which their country is a party, outlawing mercenary activities and the use of mercenaries, together with observations on their Government's position regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989;

(f) Suggestions which, in their Government's view, may be of use in enhancing the international treatment of the topic of the prohibition of the use of mercenaries;

(g) Information on the existence of security service, consultancy and military training companies offering their services to Governments in order to intervene in internal armed conflicts with the assistance of mercenarized military professionals, for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the country's investments and economic ventures.

12. In reply to this communication, the Special Rapporteur received official information from the Governments of Brunei Darussalam, Colombia, Cuba, Cyprus, Ecuador, Finland, Germany, the Russian Federation and Uganda. The communications received from the Governments of these States were reproduced in the Special Rapporteur's recent report to the General Assembly (A/52/495, paras. 7-16). Of particular interest for the information supplied and for their contribution to the treatment of the question are the communications received from the Governments of Cuba, Ecuador and Germany. The communications received from Brunei Darussalam, Cyprus and the Russian Federation provide information on the legislation in force in those countries concerning the use of mercenaries and on the relevant international instruments to which they are parties or are considering becoming parties.

13. By letter dated 27 August 1997, the Permanent Representative of Jordan to the United Nations Office at Geneva replied to the Special Rapporteur's communication as follows:

> "I would like to refer to your letter dated 4 June 1997 on the question of the use of mercenaries.
>
> "The Jordanian Government wishes to confirm that there has never been any use of mercenaries by Jordan or within its territories, nor does the Government have any knowledge of Jordanian citizens participating in mercenary activities.

"Regarding the operation of Jordanian private protection and security companies the Government stresses that the activities of such companies are bound by military cooperation agreements in the context of legitimate military cooperation as recognized by international principles."

14. The Permanent Mission of Tanzania to the United Nations Office at Geneva replied to the Special Rapporteur's communication by a letter dated 2 September 1997 from Mr. Francis Malambugi, Chargé d'affaires ad interim. The letter reads verbatim as follows:

"I am writing in response to your letter reference G/SO 214 (18-16) 4 June in which you sought information on the use of mercenaries as mandated by United Nations General Assembly resolution 51/83, and to respond as follows:

"(a) Tanzania does not have any mercenary activities on its territory. It therefore does not have any information on the recruitment, financing, training, assembly, transit or use of mercenaries on its territory.

"(b) The Tanzanian Government does not have information on the participation by any Tanzanians as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in violation of human rights.

"(c) Tanzania does not have information on the possible existence of mercenary activities in the territory of another country from which actions are carried out that affect or could potentially affect the sovereignty of Tanzania, the exercise of the right of Tanzanians to self-determination and the enjoyment of human rights by Tanzanians.

"(d) Tanzania does not have information on the possible existence of mercenary activities in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms trafficking and contraband.

"(e) Tanzania does not have domestic legislation in force specifically outlawing mercenary activities and use of mercenaries. However, Article 147 (1) of the Constitution of the United Republic of Tanzania could be construed as prohibiting the use of mercenaries since it prohibits the formation of any type of army (except by the Government) in Tanzania.

Tanzania is a party to the Organization of African Unity Convention for the Elimination of Mercenaries in Africa of 1977. Tanzania ratified this Convention on 4 March 1985. Nonetheless, Tanzania has not yet acceded to the United Nations Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989. As this Convention is an attempt to curb mercenary activities on

the international sphere, Tanzania joins other countries in supporting it. Measures are in the pipeline to accede to this Convention."

15. By note verbale 269/AL of 3 October 1997, the Permanent Mission of France to the United Nations Office at Geneva replied to the Special Rapporteur's communication, stating verbatim as follows:

> "With regard to information on activities involving mercenaries, the French Government wishes to point out that the Ministry of Defence does not have recourse to the services of mercenaries. Persons serving as foreigners in the French Foreign Legion are members of the French armed forces.
>
> "Insofar as French nationals are concerned, French military personnel serving under cooperation arrangements for the benefit of foreign armed forces within the framework of technical military assistance missions, pursuant to the bilateral agreements concluded with the States concerned, as well as those employed by services and consultancy companies depending directly upon the Ministry of Defence, whatever their statutory position, form part of official missions approved by the Government concerned. They can in no case be assimilated to mercenaries.
>
> "Concerning the position of the French Government on the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, of 4 December 1989, France is continuing to study the possibility of accession."

C. Correspondence regarding mercenary activities against Cuba

16. In previous reports to the Commission on Human Rights and the General Assembly, the Special Rapporteur drew attention to and reproduced communications received from the Government of Cuba in which reference was made to mercenary attacks on that country "from the earliest days following the victory of the revolution" (A/52/495, para. 8). The communications referred to various groups operating in southern Florida and also involving Cuban nationals residing in that area. In respect of these reports, the Cuban Government considers that "nationals of a country should be deemed mercenaries when they attack their own country at the behest of a foreign Power and are in its pay" (ibid.). The said Government therefore suggested that the Special Rapporteur should study this aspect of mercenary activities in greater depth.

17. Although it should be noted that at present article 47 of Additional Protocol I of 1977 to the Geneva Conventions of 1949 sets as a requirement for the definition of a mercenary that the person concerned is neither a national nor a resident of the country that he affects by his unlawful activity, the Special Rapporteur has indicated in his reports of 1995, 1996 and 1997 that the international legislation regarding mercenaries contains gaps, conflicting requirements and deficiencies of wording that facilitate the performance of unlawful acts which should be considered and punished as mercenary acts.

18. Nevertheless, the illegal acts against Cuba in September 1997 which resulted in the death of an Italian citizen and material damage to hotel

facilities in the country may be said to bear the hallmark of mercenary activity since the perpetrator was a foreign national and admitted to a number of facts qualifying him as a mercenary agent in the light of the international provisions which are currently in force on this matter.

19. On 11 September 1997 the Cuban Government sent an official communication in which it reported the detention of the Salvadoran citizen Raúl Ernesto Cruz León, who had admitted to being the perpetrator of various attacks on hotel and tourist facilities. International cable television at the same time broadcast the self-incriminating statements of Raúl Ernesto Cruz León admitting to being a mercenary.

20. These developments prompted the Special Rapporteur to seek official information about this matter directly connected with his mandate. On 1 October 1997 he received the following communication from the Cuban Ministry of Foreign Affairs, which is reproduced verbatim:

> "It should be pointed out that the Cuban Government responded on 6 January 1997 to the requests of the Special Rapporteur on this topic, and at that time 'also reserved the right to provide new details and information if appropriate and necessary'.
>
> "As we have reiterated in many international bodies, the use of mercenaries and their recruitment, financing and training are crimes of profound concern to the Cuban Government since they violate basic principles of international law. Mercenary activities in turn constitute a flagrant violation of fundamental human rights.
>
> "It therefore seems appropriate to draw the Special Rapporteur's attention to new developments and information concerning the use of mercenaries that directly affect Cuba.
>
> "As has become public knowledge world-wide, several explosions occurred on 4 September last, between 12.11 and 12.31 p.m., in the hotels Copacabana, Tritón and Chateau Miramar in the city of Havana, causing damage to property and resulting in the death of the Italian citizen Fabio Di Celmo.
>
> "Later, at 11 p.m. on 4 September, another explosive device was detonated in the 'La Bodeguita del Medio' restaurant in Havana, causing material damage in that establishment.
>
> "The investigation conducted by the competent Cuban authorities made it possible the same day to identify and detain the perpetrator of these acts, identified in his passport as Raúl Ernesto Cruz León, a Salvadoran national who had entered the country from Guatemala as a tourist on 31 August.
>
> "In his statements the detainee acknowledged having brought into the country the C-4 explosives used in these acts, together with other necessary equipment, and admitted that he was the person who had

actually planted the four explosive devices in a single day, on 4 September. He also stated that he had planted the devices which exploded in the Capri and Nacional hotels on 12 July.

"The investigation furthermore made it possible to establish that Raúl Ernesto Cruz León was a mercenary agent recruited abroad, trained, supplied and paid to carry out these acts.

"For each bomb he was to receive a payment of $4,500. He was given training in El Salvador and received the necessary equipment, a list of possible targets, tickets and money to cover his expenses.

"Cruz León stated that he had been a member of the Salvadoran army, where he received training as a parachutist and as a sharpshooter, the latter in a military school in Georgia in the United States of America. He indicated that he had also taken a course in explosives with United States instructors.

"The detainee confessed that his only motive in this affair was pecuniary. He described himself as a bold adventurer, and admitted that it did not matter to him what target was to be attacked or what country was affected.

"The investigation into this case revealed, without the slightest doubt, the preparation and execution of an operation carefully organized from the city of Miami, in the United States, by a subversive unit subordinate to the so-called Cuban American National Foundation, directed by the counter-revolutionary leader Jorge Mas Canosa. For the commission of the recent acts, they had at their disposal substantial financial resources which enabled them to employ and train professional terrorists working undercover as tourists and provide them with the requisite equipment and a method of operating against Cuban tourist facilities designed to avert investigation.

"The earlier work of the competent Cuban authorities demonstrated the use of foreigners in these acts, thus making it possible to identify and detain the mercenary Raúl Ernesto Cruz León. The competent Cuban authorities had learnt by this time of the existence of a network of mercenaries in El Salvador dedicated to terrorism and international drug trafficking and very closely linked to the Cuban counter-revolution in Miami. It is known that various members of that city's anti-Cuban mafia had long been supporting and associating openly with the most reactionary forces of that Central American country, including the death squads.

"It is worth indicating as background that, between April 1994 and September 1997, our special services received reports of over 30 terrorist plots against Cuba hatched in Miami, more than 15 of them involving the use of C-4 explosives, and organized by the Cuban American National Foundation and other extremist and counter-revolutionary groups such as Alpha 66, PUND and the Orlando Bosch Group - responsible for the Barbados crime involving the blowing up of a Cuban commercial aircraft

in mid-air - which are all based in and operate from the United States, and about which we have informed the Special Rapporteur previously.

"Considering that these operations are planned and financed from Miami by the Cuban American National Foundation and other extremist organizations which act with complete impunity and tolerance, the Cuban Government once again urges the Special Rapporteur to use his good offices to request the United States authorities to take strong and decisive action to put an end to these reprehensible acts.

"The Special Rapporteur should continue, moreover, as in his most recent reports, to explore more deeply the causes and effects of the existence of mercenary practices and their increasing linkage with acts of terrorism."

21. The Special Rapporteur also requested a copy of Raúl Ernesto Cruz León's self-incriminating statement. The Special Rapporteur is awaiting that document in order to analyse the characterization of the act, existing connections, the possible responsibilities of third parties and its possible mercenary character.

22. In connection with this infringement of the sovereignty of a State Member of the United Nations, the Special Rapporteur has requested information from the Government of the United States of America about any investigations being carried out, particularly in Florida, to determine to what extent groups opposed to the Cuban Government might be responsible for the commission of these illegal acts.

23. The Special Rapporteur believes that the investigation of this matter should continue until all the connections and responsibilities have been established. The evidence answers the description of mercenary activity which has been publicly admitted. Out of simple respect for the principles of objectivity and impartiality, the act must not be passed over in silence or its gravity underestimated. Truthful investigation and subsequent punishment must always be viewed as effective means of ensuring that mercenary activities do not go unpunished, and also of preventing such unlawful acts from being repeated.

II. MERCENARY ACTIVITIES IN AFRICAN COUNTRIES

A. General aspects

24. Owing to complex circumstances connected with political and social upheavals in various African countries, but also because of the lure of the continent's considerable natural and energy resources, it is Africa that suffers the most from the presence of mercenaries who meddle in internal affairs and thereby affect the self-determination of peoples. There is a constant danger of intervention by mercenary forces, which take advantage of armed conflicts, inter-ethnic confrontations and power struggles, as has been evident in most of the cases where violence has jeopardized the right of African peoples to peace, security and political stability.

25. The usual means of recruiting mercenaries - hiring them directly through an agent who tends to be a former mercenary or a recruiting office operating from a third country - have in recent years been supplemented by the establishment of firms providing consulting services, military training and private security. These firms present a more modern and efficient image and engage in activities which are apparently legal, but in fact they work with mercenaries and represent a danger to the economies, democracy and self-determination of peoples.

26. On the basis of the information collected over 10 years, the Special Rapporteur responsible for analysing and proposing options for the elimination of mercenary activities is justified in stating that, although the phenomenon of mercenarism can occur in any country and continent, Africa is the place most exposed to the activities of mercenaries. In the 1970s this was due to the vestiges of colonialism and the open hostility of those who felt their interests harmed by the accession to independence of sovereign African States.

27. However, the continuing examples of countries in which attacks were carried out by mercenary forces in the 1980s and the 1990s provide the basis for an updated description of the phenomenon. This should be taken into account in the work of strengthening peace in Africa and securing the adoption of preventive measures against mercenaries.

28. The recurrent elements observable in the countries which have suffered from the presence of mercenaries are noted below, in a list which is neither exhaustive nor definitive:

(a) Political instability, which has debilitated and slowed down the institutional strengthening of the State and its authority. These are situations of successive, virtually endemic crises in which the struggle for power among factions reveals reluctance towards, and misunderstanding of, the rules of democracy on the part of political leaders who do not hesitate to engage in militarism and create armed groups around themselves;

(b) The weak institutional structure of the armed forces, which as a result assume in practice the role of deliberative bodies, with the capacity to arbitrate internal political disputes and resolve them by military means;

(c) The development of a segregationist policy in the days of apartheid, which affected many countries of southern Africa and subjected them to criminal acts and attacks by battalions of mercenaries from the very heart of the racist segregationist regime;

(d) The existence of many internal armed conflicts, some of them due to ethnic mistrust and resistance, which embrace whole regions and in which the belligerents hire mercenaries to boost their military potential;

(e) The lucrative business for organizations which hire and supply mercenaries and for arms dealers resulting from the incitement of hatred and political, religious, ethnic or any other kind of rivalry that fuels the prolongation of the armed conflicts;

(f) The insecurity of rulers who have not hesitated to organize militias or military apparatuses for their personal protection, in which the training and visible presence of foreign mercenaries has exacerbated rivalries and fuelled armed confrontations, especially since these paramilitary corps of bodyguards are recruited from members of the ethnic group to which the ruler belongs. The response of other political leaders is then to recruit their own armed militias. This atmosphere of mistrust and militarization is favourable to the presence of mercenaries;

(g) Poverty, insecurity and lack of prospects foster in some young people a marked tendency towards violent behaviour. This leads to the emergence of armed gangs which impose exactions on the population. Of course, this development would seem to be connected more with an increasing problem of vandalism and common crime. But it should not be forgotten that a significant number of young people, driven by hunger and unemployment and skilled in the handling of weapons, find that the mercenary life offers lucrative employment and a lifestyle very similar to that of the bogus heroes of a number of television series;

(h) The presence in the region of transnational conglomerates engaged in promoting their own interests, which are at the very least different from, if not contrary to, those of the former colonial Powers. These transnationals behave reprehensibly in their exploitation of natural and energy resources. Their interference in internal affairs and encouragement of armed conflicts in pursuit of their own interests are not inconsistent with the presence of mercenaries, either to protect their facilities on territories that were literally abstracted from the authority of States prevented by the conflicts from exercising that authority, or to lend military support to the faction associated with the interests of the multinationals;

(i) Lastly, there are the modern private security companies which provide many different kinds of services, economic advice and sophisticated military training but which are covers for former professional soldiers and mercenaries who, in exchange for large sums of money, offer themselves as a solution to countries experiencing instability and armed conflicts and the consequent impossibility of developing their enormous natural resources. Such companies, as will be discussed below, today represent the biggest and most sophisticated threat to the peace, sovereignty and self-determination of the peoples of many countries.

B. The case of Sierra Leone

29. Sierra Leone experienced an internal armed conflict in which mercenaries took part. Peace appeared to have been achieved when, in November 1996, a peace agreement was signed by President Alhaji Ahmed Tejan Kabbah and the leader of the rebels, Foday Sankoh. A few months later, however, in May 1997, there was another coup d'état, led by Commander Johnny Paul Kosoma, who overthrew President Tejan Kabbah and set up a revolutionary council. Violence has thus returned to the country, forcing at least half a million people to flee and the Governments of the region to repudiate the Government installed by the coup leaders. At the time of writing, military pressure had still not succeeded in restoring legitimacy.

30. It will be recalled that, after four years of armed clashes and precarious control of power by a military regime, Tejan Kabbah was elected President democratically, in March 1996. The rebel forces of the Revolutionary United Front (RUF) then accepted a ceasefire, and months later, in late November 1996, a peace agreement was signed by President Tejan Kabbah and the leader of the rebels, Foday Sankoh. The Governments of Côte d'Ivoire, Guinea, Burkina Faso, Nigeria, Ghana and Togo contributed to the peace effort, thereby providing for the world an eloquent demonstration of unity and efficiency in West Africa. From that moment on it was the responsibility of the democratic Government to strengthen political stability, the supremacy of civil authority and peace.

31. Fears about the extreme fragility of the peace have been borne out by events to a considerable extent. The problems of extreme poverty and lack of staple foods and the continuing presence of armed groups engaged in pillage have helped to perpetuate insecurity and fear as factors limiting the Government's ability to expand its basis of legitimacy. For much of the population, there has been no difference whatever between the war of earlier months and the proclaimed peace; people have been subjected not only to the continuing exactions of the armed rebels but also to those imposed by members of the regular armed forces.

32. It was probably the widespread insecurity which caused the elected Government to decide not to cancel the contract of Executive Outcomes, a private security company that works with mercenaries and performs a variety of services. Instead, it rewrote the contract, making the mercenaries principally responsible for the protection of the region of Kovo against the attacks of the rebel forces. However, the signing of the peace agreement carried with it the rebels' request that Executive Outcomes should leave Sierra Leone. We assume that this had its effect on a Government which, whatever its intentions, relied on the supposed efficiency, protection and security to be afforded by a private company formed by mercenaries, who were more interested in what they could earn for their services than in a stable and lasting peace in Sierra Leone.

33. A coup d'état occurred on 25 May 1997, which was led by Commander Kosoma and in which the lower ranks of the armed forces took part. The toppling of President Tejan Kabbah and the assumption of power by a revolutionary council, which immediately called upon Nigeria to return Foday Sankoh, put an end to a precarious peace and triggered the renewed violence which still afflicts the country. The Governments of the region not only have condemned the coup but have also isolated the rebels and demanded the return of the democratic Government of President Tejan Kabbah, an event which, as a result of recent negotiations, is to take place on 22 April 1998.

34. The hypothesis of the Special Rapporteur is that the presence of the private company which was partly responsible for the security of Sierra Leone created an illusion of governability but left untouched some substantive problems which could never be solved by a service company. This danger was flagged in paragraphs 64 and 65 of the Special Rapporteur's previous report to the Commission on Human Rights (E/CN.4/1996/27), in which he noted that Executive Outcomes was involved in such delicate activities as "training of officers and other ranks; reconnaissance and aerial photography; strategic

planning; training in the use of new military equipment; advising on arms purchases; devising psychological campaigns aimed at creating panic among the civilian population and discrediting the leaders of the RUF, etc." (paragraph 65). Moreover, Executive Outcomes was responsible for overall security and was directly active in the Kovo and Koidu districts, Kangari Hills, and Camp Charlie at Mile 91.

35. The issue was also dealt with in the Special Rapporteur's 1996 report to the General Assembly (A/51/392, para. 33), in which he warned about the precarious situation in Sierra Leone, pointing out that the presence there of a company that worked in security matters with such dubious personnel as mercenaries was a debilitating factor which at some point would impair the stability of the legal Government. Prompted by an enlightened sense of unity, discipline and subordination to civilian rule, Sierra Leone should accord priority to organizing its police and armed forces, which should assume sole responsibility for security. Retaining the company for that function until late 1996 was a mistake and a loss of valuable time, and, according to the thesis developed here, it weakened the legal Government of President Tejan Kabbah.

36. The Economic Community of West African States (ECOWAS) proposed that Sierra Leone's military junta should turn power over to President Tejan Kabbah, which it had promised to do in April 1998. Failure to do so would aggravate the military aspects of the conflict, adding to the suffering of the people of Sierra Leone. The country is rich in bauxite and diamonds, which could serve as the foundation for its people's progress.

37. The current situation in Sierra Leone has quite simply added to the suffering of its population: no fewer than 500,000 persons are estimated to have been displaced, most of them living a hand-to-mouth existence. The demand made by the Governments of West Africa, with the endorsement of the Organization of African Unity (OAU) and the United Nations, should provide the basis for the return to power of the legitimate President, Tejan Kabbah, and is a prerequisite for launching sustained programme activities promoting life, humanitarian care, order, security, peace and democracy.

38. With a view to the kind of intense effort required by the situation in Sierra Leone, the active commitment of the African countries and United Nations backing of that commitment are indispensable if there are to be political stability and opportunities for development in Sierra Leone. But events should also teach us to be wary of wrong approaches that do nothing to cure the structural ills suffered by the people. In the final analysis, the right to life, the political and legal institutions of States, security, peace and maintenance of the rule of law and democracy are not matters to be turned over to private companies which claim to perform advisory and military training services; such companies stand to gain by selling their competence as security agents, but they certainly cannot replace bodies which have been entrusted with the responsibility of protecting life and maintaining security as an obligation vested in the State.

C. Presence of mercenaries during the armed conflict in the Democratic Republic of the Congo

39. In the report which the Special Rapporteur submitted to the Commission on Human Rights in March 1997 he made an incidental reference to the presence of mercenaries who presumably had been hired by the Government of what was then Zaire, when Mobutu Sese Seko was still President. The communications sent by the Special Rapporteur to the Government of Zaire to shed light on the allegations were never answered. It appears that the hired mercenaries were active mainly when the military conflict was concentrated in the east and that their principal goal was to prevent the city of Kisangani from falling into the hands of the Alliance of Democratic Forces for the Liberation of Congo-Zaire, which was headed by Laurent Désiré Kabila.

40. Notwithstanding the support of the mercenary forces, the Alliance advanced gradually into Zairian territory until it took Kinshasa, the capital, and installed the Government of the current President of the Republic. But the overthrow of the Government of Mobutu Sese Seko after 31 years in power cannot alter the fact that it drew on approximately US$ 50 million in public funds to pay and arm mercenaries in a desperate attempt to remain in power.

41. According to the information received, the mercenaries hired to defend Mobutu came principally from Angola; the Federal Republic of Yugoslavia (Serbia and Montenegro); Bosnia and Herzegovina; South Africa; and France, where two former members of the presidential security teams, Alain le Carro and Robert Montoya, were alleged to be in charge of recruiting between 200 and 300 mercenaries. There were also, but in smaller numbers, Belgians, Britons and Mozambicans. Executive Outcomes was also mentioned as a provider of mercenaries, a fact that the company immediately denied. These reports were repudiated by the Governments of several countries referred to in connection with their nationals; they stated that they had no involvement whatever in the alleged hiring of mercenaries.

42. There is some evidence of the actual presence of mercenaries who attempted to defend Mobutu Sese Seko's Government and who, after the fall of Kisangani, for the most part chose to leave the country. With the intention of clearly establishing what actually happened, the Special Rapporteur has asked the Government of the President of the Democratic Republic of the Congo for accurate and verifiable information.

D. Mercenary activities in the Republic of the Congo

43. In mid-1997, another African country was afflicted by an armed conflict. This time it was the turn of the Republic of the Congo - Brazzaville. Private militia there, hastily armed and gathered around former President Denis Sassou-Nguesso, such as the "Cobras", had violent confrontations with the regime of President Pascal Lissouba, finally bringing it down on 23 October.

44. Once again, the active intervention of mercenaries became one of the ingredients of the conflict. Paradoxically, it was the legal Government of President Lissouba which had hired mercenaries even before the armed conflict began. This was probably because the ruler was unsure that the armed forces

were completely loyal, but in point of fact - and this is of dubious legality - the then Government hired mercenaries from Israel and South Africa to provide military training to the Zulu militia who were later incorporated into the regular forces of the Congo, while maintaining a privileged ethnic-political relationship with the former President. On 10 October 1997, several mercenaries returned to South Africa from Namibia.

45. These internal difficulties, inter-ethnic rivalries, the extension of President Lissouba's term of office, and even the conflicting interests of multinational corporations trying to control oil operations in the Congo, are some of the main factors behind this rapid and violent conflict. The reality is that President Lissouba hired mercenaries during the height of the conflict. They included Ukrainian airmen who were put in charge of MiG-21 planes, South African helicopter pilots, former Russian officers and British ex-soldiers.

46. Upon the fall of Lissouba, groups of militiamen from the forces of Denis Sassou-Nguesso captured and imprisoned several mercenaries, reportedly of Russian nationality. At the time of writing the Special Rapporteur does not know whether these persons are still being detained in the Congo, which is why he has written to the new Government asking for information on the subject as well as additional information that might help him understand how mercenaries became involved in African problems and turned them to their advantage.

III. PERSISTENCE AND EVOLUTION OF MERCENARY ACTIVITIES

A. Critical analysis of the present situation

47. The Special Rapporteur has accumulated information and undertaken a number of working visits which have enabled him to acquire knowledge and experience on the subject of mercenary activities. He believes that the critical mass of material accumulated should be used as a basis for general reflection aimed at providing useful inputs for the decisions to be adopted on the subject by the United Nations, international organizations in general, States, and all the institutions of society that contribute to peace, security and respect for human rights.

48. A preliminary observation is that, in general, mercenaries are usually present in situations of domestic or international armed conflicts. This is because the parties to a conflict have specific military needs which entail the assistance and hiring of professional soldiers. A person's character or the fact that he has been a soldier or is a former combatant, as well as experience in the use of sophisticated weapons, are what characterize the mercenary, especially those hired to participate in combat activities and train persons who are to join battalions, columns or units.

49. On the basis of his studies and research, the Special Rapporteur has maintained and continues to maintain that mercenary activities are not a thing of the past, but still exist, and that mercenaries are used as a means of violating human rights and jeopardizing the self-determination of peoples or the stability of legitimate Governments. Armed conflicts, terrorism, arms trafficking, covert operations relating to the interest of a third Power

acting to harm one or more parties to an armed conflict, a Government's inability to ensure security within its own territory, and violence linked to extremist intolerance foster or create the market for mercenaries, defined as foreign experts acting individually or through companies whose "skilled" services are sought because of their proven experience in military matters.

50. The United Nations has repeatedly condemned mercenary activities. There is no legal system that authorizes or tolerates them. Whether or not there is any gap or deficiency in the law, such activities are unlawful at the international level. Mercenary activity arises in connection with situations that violate the self-determination of peoples and sovereignty of States. In carrying out their work, mercenaries become the perpetrators of atrocious crimes that violate human rights. The fact that a Government hires mercenaries or turns to "qualified" companies that provide mercenary services for its own defence and to strengthen positions during armed conflicts should not be invoked in claiming that its action is legal. A Government is endowed with legitimacy in order to work within its constitutional framework and that of the international treaties to which it is a party. Under no circumstances, however, may they use the power entrusted to them to engage in acts that are contrary to self-determination, to jeopardize the independence and sovereignty of the State itself or to consent to acts that may do irreparable harm to the life and security of the inhabitants.

51. The foregoing remarks notwithstanding, the use of mercenaries may be explained by the following reasons: military professionalism; experience in warfare; concealment of the real mastermind; greater safety in acting without directly having to assume the consequences; comparatively low cost, in terms both of money and of endangering the lives of one's own military personnel; knowledge of strategic planning; and so on. The reality is that there are persons disposed to become mercenaries and that, ultimately, they are so disposed because of the pay they receive for conducting unlawful activities in a country other than their own; their involvement is directly motivated by financial gain. This situation is compounded by the existence of modern entrepreneurial conglomerates involved in security as an "industry", which hire mercenaries for some of their activities.

52. There are usually two circumstances that determine the actual use of mercenaries: on the one hand, the existence of an organization, State or party to a conflict which, in order to carry out operations that are not in conformity with the law or with international obligations of non-interference, resorts to hiring mercenaries as a way of achieving its goals. On the other hand, there are recruiting organizations and enterprises and people who, for high pay, will agree to serve as mercenaries in the knowledge that they will be performing acts prohibited by national laws and international treaties protecting human rights, State sovereignty and the right of peoples to self-determination.

53. The investigation of mercenary activities must be objective, encompass all those involved and seek to determine the nature of the act, without accepting any formal legal limitations that may be invoked precisely to conceal the mercenary component. When there are accusations that acts have been committed by mercenaries, the actual identity and nationality of the person have to be determined; the investigators must go through the files,

rule out altruistic voluntary enlistment, compile information on recruitment and training centres for soldiers of fortune, follow the trail of covert operations, obtain reliable data on the pay and other benefits agreed upon, and detect the simultaneous use of other nationalities and passports. When a new nationality is granted to foreigners taking part in an armed conflict, it is necessary to establish the length of time, circumstances and legal grounds for the good faith and legitimacy of the new nationality. The investigation should also cover private security companies when there are reasonable indications that their services entail the employment of mercenaries who may resort to methods prohibited under international law.

54. Mercenary activities have so many ramifications nowadays that attention must focus on the matter of nationality, which hitherto has been considered as a means of differentiation and a determining factor in deciding whether an act that impedes the enjoyment of human rights and the self-determination of a people is a mercenary act. Indeed, a foreign Power can avail itself of nationals of another country to do serious harm to that country. In such a case, the rules of international law as they now stand would not allow the act to be defined as mercenary, even if there was evidence of recruitment and payment. Nevertheless, if existing international law is excessively rigid, inadequate or full of gaps or lends itself to an interpretation too difficult to apply for the purpose of defining mercenary acts, it would be wrong to invoke the existing rules as justifying acts and behaviour which are intrinsically mercenary.

55. Without obviating the need to clarify, refine and expand the rules of customary international law and conventional international law to combat mercenary activity, it should be established as a principle that, in essence, the aim of such rules is to condemn a mercenary act in the broad sense as the buying and selling of criminal services in order to interfere with the enjoyment of human rights, sovereignty or the self-determination of peoples; and that there is international jurisprudence condemning interference by one State, not to speak of individual organizations, in the internal affairs of another State and in the lives of its people. It is an aggravating factor if nationals of the latter country are employed for that purpose. Such nationals would not strictly speaking be considered mercenaries but, on the part of those recruiting them, the intention of using them as mercenaries is undeniable, as is the willingness of such nationals to accept a relationship that turns them into mercenaries. The definition does not change if a national group organized abroad for purposes of opposing their country's Government politically and militarily hires and pays nationals or foreigners, based on their military experience or experience in the use of arms and explosives, in order to carry out attacks against the country and its Government. Here too, the intention of using mercenaries or turning persons into mercenaries is obvious. In any case, a distinction must be made between political opposition to a regime, which is the right of any member of a national community, and the employment of methods that are inherently unlawful, such as the use of mercenaries.

56. The Special Rapporteur believes that unlawful activities in which nationality is used to mask their mercenary nature by a Power that recruits, prepares and pays an individual to commit a criminal act against another country should be analysed and debated with a view to revising current

international provisions on the subject. Since the General Assembly has repeatedly condemned mercenary activities, as have such other United Nations organs as the Security Council, the Economic and Social Council and the Commission on Human Rights, and since in addition Member States have condemned such activities and some countries have national laws making mercenarism a crime, where there are no laws or only inadequate laws a case can be made for the existence of customary international law that rejects, condemns and prohibits mercenary activities based on the nature of the acts and not on the fact of having a different nationality.

B. Current international legislation and its limitations

57. The Special Rapporteur deems it necessary to recall in this part of his report to the Commission on Human Rights his analysis of and conclusions on current international legislation relating to mercenary activities. This matter was covered in previous reports. It is referred to once again here because the international community should reflect on the possible connection between the persistence of mercenary activities and obvious gaps in relevant international law. Furthermore, the increasing tendency of mercenaries to hide behind modern private security companies may be due to the fact that existing international law does not offer the best means of anticipating and resolving situations such as those posed by the presence of mercenaries.

58. In the Special Rapporteur's experience, the topic calls for a review as outlined below. Issues on which the relevant United Nations bodies must take a stand include: what is the status of a foreigner who enters a country and acquires its nationality in order to conceal the fact that he is a mercenary in the service of a third State or of another party to an armed conflict? Of a non-resident national who is paid by a third State to carry out criminal activities against his own country of origin? And what about a dual national, one of whose nationalities is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third State? What are the limits of *jus sanguinis* in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears? These questions are not simply casuistic. The Special Rapporteur's earlier reports contain specitic references to situations such as those just described and, even though the evidence pointed to mercenary activities, legal inadequacies and gaps made it difficult accurately to classify the act and the person who committed it.

59. In its most recent resolution on mercenary activities, the General Assembly drew attention to the need to review and update proposals intended to make the condemnation of mercenaries more effective. Moreover, earlier resolutions of the General Assembly recommended that expert meetings should be convened to consider further the issue of mercenaries and make proposals for a clearer legal definition in order to assist in the prevention and punishment of mercenary activities. These meetings have not yet been held, although the time seems ripe for them to be scheduled as soon as possible. Criteria need to be adopted in order to harmonize a position that, in addition to condemnation, provides the necessary legal proposals effectively to prevent and punish mercenary activities, whatever their form. Statements formally condemning mercenary activities have not served to prevent

the services of mercenaries or of firms of doubtful lawfulness and legitimacy from being called on. As legal voids or the obsolescence of legislation occasionally facilitate the repetition of such acts, the matter must be addressed at a level at which the appropriate technical and juridical response can be proposed.

60. An analysis of the factors behind the recurrence of the phenomenon must consider the problems caused by gaps in existing legislation and by flexibility with regard to classification as a mercenary. The persistence of mercenary activities, the range and variety of the forms in which they are carried out and the hidden networks of complicity behind these activities suggest that States, particularly the smallest and weakest ones, are not adequately protected against mercenarism and its various forms. The international legal instruments that serve as a framework for the consideration of the question are imperfect and contain gaps, inaccuracies, technical defects and obsolete terms that allow overly broad interpretations to be made. Thus, for example, a person who is to all intents and purposes a mercenary agent could take advantage of some of the imprecise legal situations to avoid being classified as such.

61. Article 47 of Protocol I Additional to the Geneva Conventions of 1949 is the only universal international provision in force that contains a definition of mercenaries; paragraph 1 punishes the mercenary by excluding him from the category of combatant or prisoner of war, which amounts to condemning him for his participation in armed conflicts; and paragraph 2 then states the definition. The first point to emphasize is that, because of its placement and contents, article 47 of the Protocol does not legislate on mercenary activities, but rather limits itself, from the standpoint of international humanitarian law, to providing for the possibility of mercenarism and defining the legal status of the mercenary if he takes part in an armed conflict. As may be seen, it does not legally define the act; hence the above-mentioned gaps.

62. Furthermore, the definition of a mercenary contained in article 47 lists the cumulative and concurrent requirements that must be met in order to determine who is a mercenary and who is not. Given the variety and complexity of the armed conflicts of the past three decades, however, the wording of this provision has not always been suitable for classifying mercenary activities. The point made by the Special Rapporteur in one of his first reports (E/CN.4/1998/14, para. 43) has turned out to be true:

> "One important element for the understanding and application of article 47 of Additional Protocol I is that no single requirement set forth in subparagraphs (a) to (f) is sufficient in itself for a person to be classified as a mercenary. The requirements are cumulative and concurrent, and all must be met for a person to be described as a mercenary. This is also one of the aspects that has raised the most objections to the application of article 47, since many have pointed out that these requirements are in fact very difficult to prove and that they make it easy for the mercenary to avoid being classified as such, while the party that has been attacked loses its legitimate right to have him punished and obtain redress."

63. This gap is also not filled in the internal legislation of most countries. According to the information provided directly to the Special Rapporteur by Governments, the laws of most countries do not classify mercenarism as a punishable offence. Although it has been nine years since the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries was adopted by the General Assembly, it still has not entered into force, as barely 14 countries have ratified or acceded to it. While its provisions contain measures which are a step forward towards the eradication of this reprehensible activity, it should be noted that article 1, paragraph 1, reproduces almost verbatim the text of article 47 of Additional Protocol I on the definition of a mercenary. Added paragraph 2 relates to mercenary violence against the constitutional order or territorial integrity of a State. No progress has therefore been made with regard to a better and simpler definition of the concept of mercenary, which would allow quicker and more direct action to be taken against mercenary activities.

64. In this context of the gaps in and the limitations of universal international legislation, the countries of Africa enjoy better legal protection thanks to the Convention for the Elimination of Mercenarism in Africa, which was adopted by OAU at its 1977 meeting in Libreville and entered into force in 1985. But "better legal protection" does not mean full protection against all the current shapes, forms and manifestations which mercenary activity may adopt or present. Even though the Convention is more complete than article 47 of Additional Protocol I, it does not differ much from that text as far as the definition of a mercenary is concerned, and it lends itself to different and perhaps contradictory interpretations when it is States themselves that, on the initiative of their Governments, hire private firms to perform services connected with public order and security.

65. Clearly then, the inadequacy of existing legislation is manifest and to prolong the situation further prolongs the risks and threats to self-determination and to the enjoyment of the human rights of peoples. It is superfluous to point out that it is precisely this context of legal loopholes and ambiguities which makes it easier to call on mercenaries and firms performing mercenary activities, without those who do the hiring or those hired incurring any real legal consequences.

66. In the light of the foregoing, the Special Rapporteur maintains that the relevant international legal instruments are but imperfect tools for dealing with the issue of mercenaries. There are difficulties in applying article 47 of Additional Protocol I to the 1949 Geneva Conventions to a broad range of cases involving mercenary activities; mercenarism is not classified as an offence under the internal criminal law of many countries; and the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries has yet to enter into force. Consequently, in this field the international community is faced with a situation that actually affects it, and the time has come for consideration of the issue also to include the need to review and update relevant international legislation on mercenary activities.

IV. PRIVATE SECURITY COMPANIES AND MERCENARY ACTIVITIES

67. The main subject of this report is private companies operating in the international market offering security and military advisory services, on account of the impact of their activities on such important issues as the self-determination of peoples, State sovereignty and national and international guarantees of the observance of human rights. Such firms are taking upon themselves responsibilities and functions reserved to States and associating their activities with a profit motive that is proper to any private firm producing goods and services on a free market, but which has limits when such sensitive issues as the self-determination of a people, the national security of a State or human rights are involved.

68. These private firms seeking to assume responsibility for the security of entire countries consider security to be a commodity like any other, subject to the law of supply and demand. If a State facing problems wishes to purchase security, they will sell it, replacing a country's armed forces and police and supposedly performing their role more efficiently - in respect of everything to do with "order". For this purpose, such companies are generally part of holdings and are therefore able, through other companies, to take part in various services which complement and enhance their offer: transport, communications, economic and financial consultancy, health, sanitation services and so on. In view of these facts, and having observed how they operate, the Special Rapporteur suggests that private companies offering international security represent a new operational model that is more up to date and effective and with a relatively adequate legal cover, but nevertheless linked to mercenary activities, as they intervene militarily and for pay, in activities which it was more prudent to entrust to State authorities than to abandon to the vagaries of free-market competition.

69. The companies described in this report emerged in the 1990s and a number of them have consolidated themselves to such an extent that they have taken part in complex operations in a number of countries. At the same time, there have been instances of international outrage as a result of popular rejection in some countries of the intervention of such companies in internal matters related to the sovereignty of the State and of the contracts, worth millions, signed with Governments seeking their services. Those who defend such companies argue that, in military and economic terms, they offer a more rational solution for States beset by crises rendering them incapable of performing the law-enforcement and security functions for which they are responsible; they may participate in internal armed conflicts on the side of the law, although with greater freedom and efficiency; they are cheaper, in other words, it is cheaper to hire them than to resort to other means, etc. The situation is unfolding, fluid and possesses a potential for evolution and development that it would be wrong to overlook. It is therefore necessary to come to grips with the issue and decide what such companies mean for the self-determination of peoples, security and peace, as international law has defined these concepts.

70. It is clear that these companies offer themselves as a kind of alternative security model for countries with internal conflicts which Governments have difficulty in managing. The premise underlying their offer is that they fill a critical void, since there are Governments which are

unable to provide security, and the international machinery does not generally anticipate the worsening of rapidly deteriorating situations moving towards armed conflict or generalized confrontation, or respond with the degree of urgency that a disturbance threatening the lives of entire populations demands. In fragile countries, where Governments are close to collapse, the presence of such private companies which, relying on the experience of military professionals, sell security, strategic planning, order, reorganization of the military apparatus of the State, protection to allow productive capacity in respect of major natural resources to be regained, short-term neutralization of zones where there is armed conflict and so forth, may be, and in fact is, well received by segments of the population.

71. Nevertheless, the possibility of satisfactory short-term results should not be confused with long-term and definitive stability and security. Naturally, the Governments contracting for such services may decide to keep on indefinitely any companies that help to put an end to internal armed conflicts and provide security in the short term. Paying so high a price would be tantamount to sacrificing independence and to handing over part of government authority to private enterprises which, lacking any substantive sense of identity with the country, will seek to derive as much benefit from the situation as possible before withdrawing when it is strategically in their interest to do so. When this occurs, the country's situation might well be worse than before.

72. A hypothetical situation of this nature would be quite the opposite of sovereignty, even if the contracting party were a lawful Government. The contract would have authorized a "formally tolerated mercenary intervention" in the form of the military actions the company under contract was authorized to perform, but the State would have abdicated its substantive responsibilities to profit-seeking organizations and memories of old colonial companies would inevitably be evoked. Today's companies are, of course, more modern, and their intentions smack less obviously of the desire to exploit a country economically. But the danger exists and these factors cannot be disregarded in view of the existence of States with significant natural resources or in a strategic location, which are experiencing acute domestic problems jeopardizing their governability.

73. The composition of these private security companies leaves no room for doubt. The major shareholders and management board members are people with professional military experience, and in those which have been set up in South Africa, the United Kingdom of Great Britain and Northern Ireland and Barbados, their records identify them as mercenaries who have taken part in various armed conflicts. As a general rule, the contracts they sign constitute acts of intervention in the internal affairs of a State, although consented to by the Government, where an essential military function is carried out in exchange for a handsome recompense. There is a clear association between such conduct and mercenary acts, although in formal terms there has been a change from the traditional mercenary since mercenaries are now hired by a company which trains them to provide technical services, less bloody, perhaps, with the focus on organizing effective internal security machinery, guaranteeing public order and putting an end to armed conflicts on behalf of the Government hiring them and providing them with authority to intervene.

74. One of the claims made by security companies is that they operate legally since they sign their contracts with Governments that lawfully and legitimately represent the State. However, this is one of the most controversial aspects of the issue, particularly because no Government is authorized to exercise the attributes of authority against the sovereignty of the State itself, but also because responsibility for internal order and security in a sovereign country is an obligation which may not be renounced or transferred and which the State discharges through its police and armed forces. The State may privatize many things and many services that lie within its competence, but not that which constitutes its very raison d'être. If it hands over such authority to a private company, and a foreign private company at that, it is agreeing to a limitation of State sovereignty, with the further drawback that the substantive legal rights of its inhabitants may be impaired and basic human rights principles and norms of humanitarian law may be violated.

75. There are private security companies operating in the international market; those countries which have signed contracts allowing them to intervene in internal affairs are known; the negative reaction which such activities have engendered among broad segments of the population in the countries where they have operated or are operating is also known. The point is that, without prejudice to acceptance of the market as a natural and regulated phenomenon in which all countries participate as best they can, the international community cannot accept, without undermining the principles on which it is based, that a function of the free market should be selling security operations the practical effect of which is to allow intervention in internal affairs by paramilitary forces with a mercenary component.

76. In terms of human rights, making internal order, the security of the individual and control over the exercise of civil liberties the responsibility of private international security companies is undesirable. A situation such as the one described is unimaginable in developed countries, which enjoy political stability and have a comprehensive institutional framework. Why should poor countries affected by instability have to add to their sufferings a situation in which private companies, in exchange for vast earnings which have a negative impact on existing poverty, take over security and control in practice the most important decisions of the State. What will then become of the independence and sovereignty of such States? The most likely outcome is that problems will, in substance, persist and become worse when the companies withdraw. If the situation obliges them to remain indefinitely, is it not true to say that the independence of the State will have disappeared? One case that compels us to consider risks such as those described above is that of Sierra Leone, where the presence of a private international security company was presented as being responsible for having restored things to normal and for the signing of peace agreements. However, this was mere propaganda and wishful thinking: three months after the company had withdrawn, everything collapsed, the legal Government was overthrown by a coup d'état and the population's suffering as a result of fresh military action increased. In other words, the solution was false. The right to life, to security, to peace, the preservation of the rule of law and of democracy are not matters that can be entrusted to private companies claiming to specialize in security; they make money from selling efficiency in security

matters, but in the last analysis are incapable of replacing those agencies responsible for the State's inherent and peremptory role to protect life and security.

77. This new operational model, as typified by Executive Outcomes (PTY) Ltd., with which the Special Rapporteur became acquainted during his mission to South Africa in 1996, consists in offering skilled military training, protection and internal security services internationally in return for large amounts of money and profits from the development of the natural resources of the place where the services are provided. Foreign firms investing in countries with significant natural resources are reportedly demanding that the security of the areas where their investment is concentrated should be provided by personnel recruited, trained and made available by the companies that sell security internationally. These companies generally organize the services they offer by recruiting foreign staff with military and police experience and, in some cases, links to mercenary activities.

78. A number of companies of the type described are operating in various countries throughout the world. In March 1997, for example, Sandline International was in the news because its contract with the Government of Papua New Guinea caused a public outrage. But the first to become established was Executive Outcomes (PTY) Ltd., registered in Pretoria and London. This firm was founded in Pretoria in 1989 by former members of the special forces of the South African Defence Force (SADF) with experience in the repressive activities of the apartheid regime. It operated under formally concluded contracts, according to company sources, providing military advice and training to the army of President Dos Santos of Angola, from which country it withdrew in January 1996. It also provided security to mining and oil companies. It was later active in Sierra Leone.

79. Are Executive Outcomes and all the other international companies operating in the security sector legally constituted private companies which, even though they might use modern forms of camouflage, act as a cover for mercenary activities? It should first of all be established that, although Executive Outcomes operates from Pretoria and is legally constituted, it is not a company with links to, or which is close to, the current Government of South Africa. Various governmental authorities have distanced themselves from and condemned the activities of Executive Outcomes. Furthermore, in August Parliament approved an international military assistance bill, which will come into force in 1998, and which regulates more strictly the international sale of security services and military assistance, and introduces a sentence of no more than 10 years' imprisonment and a fine of no more than 1 million rand for any South African or foreign citizens resident in South Africa who participate in unauthorized military missions abroad.

80. By its own definition, Executive Outcomes is a company devoted to providing highly skilled and confidential military adviser services and to furnishing personnel, mainly military and highly skilled, to provide strategic and tactical training services in countries requiring sophisticated, effective support for the adequate control of their socio-political reality, to put an end to internal conflicts and to encourage the development of economic activities related to natural and mineral resource development. Underlying these services is the fact that they are offered because there are States in

such crisis that they are no longer capable of safeguarding their borders, public order and the security of the population. In this context of crisis, which also involves distrustful, precarious relations with other States, a vacuum is created which is precisely what leads to the establishment of such companies.

81. According to its description, Executive Outcomes is a security company which provides "technical advisers whose area of specialization is basically military". Its personnel provides training for situations such as: low-grade armed conflicts with counter-insurgency preparation, enemy infiltration, intelligence, sabotage, protection of the population and the territory; infantry training, including motorized and parachute infantry; use of tanks; artillery and anti-aircraft artillery defence; combat engineering training; intelligence; military police; medical support services; communications; special rapid reaction forces; officer and support staff training; logistics; air force; navy and technical support.

82. To judge by all the information so far received, Executive Outcomes is competing in a market where the number of such firms is growing, although it is undoubtedly the largest of those operating in Africa, where it has obtained various types of contract for multiple assistance. Other companies of South African origin are also said to be operating in the regional market. The risk that several companies of this kind may be competing in the market and may come into confrontation over unlawful resources is a potential danger which the case analysis must not overlook. Companies such as Executive Outcomes recruit highly qualified military personnel to provide their services. In Executive Outcomes, they are mainly former members of the South African and foreign security forces. According to the information obtained, about 700 persons are regularly employed by this company (soldiers, police, doctors, pilots, engineers, technicians, etc.), with high salaries; the salaries of every rank from general to non-commissioned officer may be 5 times higher than in an army such as that of South Africa and definitely 10 times higher or more than in other African States.

83. With regard to weapons and logistics, Executive Outcomes uses equipment purchased from companies in South Africa and various European countries. Part of the equipment includes aeroplanes, helicopters and aerial photography aircraft. Strategic Resources Corporation (SRC) the holding company, has an airline, Ibis Air (charter flights), which it uses to transport personnel and logistical consignments to various countries in which it is active. Executive Outcomes' tendency is, naturally, to grow and expand its interests, and this leads to its involvement in armed conflicts in the countries it assists and to its participation, which may be direct or through its subsidiaries, in internal affairs, such as the economy, resource development and capital investment. Although this is a matter of a private company being involved in intrinsically complex military services, the company is determined to prove that its activities are above board and that it is professionally efficient.

84. What has been said above suggests that a certain amount of tolerance exists at the international level and that international organizations should refrain from intervening or delay their intervention in conflictual situations, which could in turn allow these private international security

companies to develop further, notwithstanding the risks involved. Executive Outcomes, and its holding company, Strategic Resources Corporation, are active in various countries; Military Professional Resources Inc. (MPRI), a company of United States origin with headquarters at Alexandria, Virginia, is reportedly even bigger, has greater operational capacity, and has carried out military training operations in Bosnia and Herzegovina. To this list could be added yet other companies, such as Keeni Mine Services, British Defence Systems, Sandline International and Air Scan, based at Titusville, Florida; some of these companies are closely linked. Air Scan has reportedly taken part in operations in Central America and Uganda, and is currently said to be protecting international oil companies in the Angolan enclave of Cabinda.

85. One of the problems that arises is whether the personnel employed by these companies or companies which have operating contracts requiring them to enrol and pay personnel with military experience are mercenaries. There is no simple and straightforward answer to this question. For most of the international law experts and international human rights non-governmental organizations consulted, these are mercenary companies which work with mercenaries and carry out mercenary activities. In the case of Executive Outcomes, its executives vehemently deny this, claiming that they are "Africans" who have decided to work for the viability and development of Africa, doing so from the military standpoint, with which they are most familiar, and which is why they work in the security field. They also insist that, formally speaking, Executive Outcomes is a commercial security company whose registration and operation are not contrary to South African and international law. Finally, they also argue that they conclude contracts only with legitimately constituted Governments and always in order to do work designed to strengthen their internal stability and thus the possibility of putting economic development policies into practice.

86. The legal framework for mercenary activities is, of course, not clear and specific enough. Executive Outcomes' arguments about the lawfulness of its activities are therefore not to be ignored. The open debate on companies such as Executive Outcomes nevertheless involves the interpretation of legal provisions such as article 47 of Protocol I Additional to the Geneva Conventions of 1949. Persons who object to Executive Outcomes say that its personnel are mercenaries because they meet all the requirements for classification as mercenaries under that provision: they are military personnel recruited in South Africa or abroad in order to fight in an armed conflict; in the African countries with which they signed contracts, they not only trained personnel for the armed forces of these countries, but took part in the hostilities for personal gain and for sums substantially in excess of what the military personnel of the countries they assisted received; and they are not nationals of those countries, but foreigners, and were not sent on official duty as members of the armed forces of any State.

87. These are convincing arguments; however, in the light of the restrictive approach adopted in various United Nations resolutions which link mercenaries with concerted acts of violence aimed at violating the right of peoples to self-determination and undermining the constitutional order of a State or its territorial integrity, while seeking to obtain substantial gain and material compensation, the contracts which private military advisory, training and

security companies conclude with States and the personnel working for these companies have some mercenary traits but cannot be described as being wholly mercenary.

88. It is clear that the companies discussed above pose numerous questions, not all of which can be answered on the basis of the international legislation in force. In any case, they are not a figment of the imagination but the result of dramatic circumstances confronting weak and afflicted States - countries in which civil insecurity is fast becoming the main issue on the national agenda, and in which the State is failing to ensure the required reform and modernization of public institutions - and international systems and powers for which cold cost/benefit logic has led to abstention and indirectly to encouragement for the activities of these companies, without a proper assessment of the consequences and risks to the system of independent States based on self-determination, which today form the international community. The point is that there is now a type of company which offers full security services on the free and globalized international market that up to now have been the exclusive responsibility of each State's own internal security system. If States are prepared to give up an intrinsic element of their sovereignty, this is something which should be clearly stated and consented to by the State's own population. It would also signify a revision of the very concept of the State as currently employed. It would need to be analysed in depth because it really would affect and change the nature, structure and functions of the State, while at the same time changing the nature of international relations.

89. A non-exhaustive list of topics which require further and more detailed investigation should include possible changes in the nature of mercenaries, as defined since the establishment and organization of national armies, because it is undeniable that large numbers of them have been joining private companies which provide security and military advice and training internationally. It should also be borne in mind that responsibility for a country's internal order and security are peremptory obligations which a State fulfils through its police and armed forces. Turning these responsibilities over to private companies registered in third countries would be to restrict the sovereignty of the State or to cede part of that sovereignty to a company, in return for which it would exercise the rights of the State police or those involved in defending territorial integrity or the population.

90. Sovereignty would thus continue to be exercised by the State, but it might be dangerous and destabilizing for the State to assume responsibility for any abuses that the security companies might commit against the civilian population. These companies might put their relations with multinational oil, mineral, chemical and other companies first, and through the use of their military resources, impose the political, economic and financial hegemony of their business partners. As clients of these powerful companies, they would have paved the way for a form of multinational neo-colonialism.

91. In view of the concerns expressed in the preceding paragraphs, it would also be appropriate for the competent United Nations bodies to discuss the international lawfulness of allowing the free market to include completely unrestricted competition from companies selling security services and the risk of interference in internal affairs by agents who, claiming to be experts,

might actually be mercenaries, intelligence agents from third States, saboteurs or other elements whose assignment is to dominate, dissociate and weaken the receiving State. Of course, these are hypothetical situations arising out of the changing reality of traditional mercenary activities and their partial replacement by private security companies specializing in military matters. The problem should remain under study; it has to be solved on the basis of more in-depth knowledge of the facts, specific references and a systematic analysis concluding with suggestions and proposals for the adoption of political, legal and operational standards relating to mercenary activities and to companies which sell security internationally.

92. The complexity of the situation described in the previous paragraphs implies that the Commission on Human Rights must endeavour to find imaginative and realistic responses so as to support States in danger of succumbing to chaos and of being lured by the siren songs that might be sung by these seductive security companies. It is obvious that the sovereignty of States and the security of the population would be better safeguarded by United Nations rapid reaction or peacekeeping forces. In any event, the international systems cannot overlook the perils looming over weak and crisis-ridden States. One positive step would be an increased will to take preventive actions that can neutralize resort to the use of force. What is needed specifically is to show that the systems for the protection of human rights and peace and security are capable of implementing efficient and convincing mechanisms to promote life, a relaxation of tensions and positive agreements for peaceful cooperation, and are more effective at doing so than these companies which derive material benefits from the weakness of Governments that are unable to control order and security in their countries.

V. PRESENCE OF MERCENARIES IN PAPUA NEW GUINEA

93. Since 1988 the Special Rapporteur has been closely monitoring the changing situation in the conflict on the Island of Bougainville in Papua New Guinea, and especially the implementation of the measures adopted in order to achieve a peaceful solution to a conflict which has already caused more than 7,000 civilian deaths (many due to the lack of timely medical care), as well as to improve the human rights situation in general. In that context, he welcomed the signing of the Honiara commitments on 3 September 1994 by the then Prime Minister of Papua New Guinea, Sir Julius Chan, and the Commander of the Bougainville Revolutionary Army, Mr. Sam Kauona. Pursuant to the Honiara commitments, a ceasefire agreement between the Government of Papua New Guinea and the Bougainville Revolutionary Army was signed on 8 September 1994, and in October 1994 a peace conference, attended by representatives of the various political factions, was held. Unfortunately the peace process did not unfold as planned and a number of events, including the assassination of the rebel leader Théodore Miriong in October 1996, resulted in renewed military action.

94. The Special Rapporteur has learned that, given the situation, the Prime Minister decided to sign a contract with Sandline International, a company registered in the Bahamas with offices in London, under which it is to provide various military assistance services to the Papua New Guinea Defence Forces. According to the terms of the contract, concluded on 31 January 1997, Sandline International undertook, inter alia, to:

(a) Provide advice and military assistance to the Papua New Guinea Defence Forces with a view to supporting them in their task of protecting the territorial sovereignty of the country and retaking control of important national resources, especially the mineral deposits in Panguna;

(b) Provide tactical training for the Special Forces Unit (SFU);

(c) Furnish intelligence services in support of military operations;

(d) Conduct offensive military operations in Bougainville in conjunction with the Papua New Guinea Defence Forces for the purpose of naturalizing the forces of the Bougainville Revolutionary Army and of regaining control of the Panguna mine; and

(e) Provide adequate follow-up to those actions by means of specific operations which would be defined in other agreements.

95. In order to furnish the military assistance described above and to participate in military operations, Sandline International undertook specifically, inter alia to:

(a) Send a 16-man command, administration and training team in the first week of implementation of the contract to establish the necessary liaison with the Papua New Guinea Defence Forces; develop a logistical and communications infrastructure; prepare for the safe arrival of the military and aeronautical equipment contracted for; initiate the information-gathering and intelligence operations and begin training the Special Forces Unit;

(b) Set up bases at Jackson Airport and the La Selva training centre in Wewac;

(c) Within 10 days of the arrival of the command, administration and training team, send and deploy the following throughout the territory of Papua New Guinea: Special Forces officers and troops, aircraft and helicopter crews, engineers, intelligence agents, special teams of operatives, mission troops, medical and paramedical personnel and so forth;

(d) Send arms, ammunition and equipment, including aircraft, helicopters, electronic warfare equipment and communications systems, as well as any personnel necessary for their maintenance and for training in their use;

(e) Ensure that personnel sent to the country have appropriate identity papers, and assume responsibility for any expense caused by loss of its personnel, unless that loss was the result of negligence by the State.

96. In return, the Government of Papua New Guinea undertook to pay Sandline International US$ 36 million for the three-month initial period of the contract, to grant to Sandline International's expatriate personnel all tax exemptions, facilities and privileges in connection with their entry into, departure from and stay in the country and with the import of their goods and equipment and, in general, to grant all the authorizations, waivers, permits and licences necessary for them to fulfil their contractual obligations. The

Government also undertook to instruct its civil servants and the members of the Defence Forces to recognize the military ranks of the company's personnel as established by the command structure and, accordingly, to obey orders from higher-ranking company personnel.

97. The Government also recognized that Sandline International's personnel were authorized to commit themselves to or initiate or fight in military operations, repel attacks, arrest and detain persons suspected of planning an act of aggression or of conspiring to do so and, in general, defend the population from threats of any kind.

98. At the end of March 1997, 40 of Sandline International's personnel, mostly South Africans, were forced to leave Papua New Guinea as a result of widespread protests within the Defence Forces at the signing of the contract described above and of mutinies in Port Moresy, the capital of the country. The leader of the group, Tim Spicer, a British citizen was confined to quarters in the capital and his passport was confiscated. The Commander-in-Chief of the Defence Forces, Brigadier General Jerry Singirok, was dismissed by the Prime Minister for criticizing the conclusion of the contract and the dispatch of the company's first instructors to the front in Bougersee. On 18 March 1997, the army protested against the dismissal of its Commander-in-Chief, mutinied at the Murray barracks and marched on Parliament. General Singirok later accepted his dismissal but requested that a commission of inquiry should be set up to investigate the Sandline International contract. On 26 March 1997 the Government agreed to appoint a commission of inquiry, and on 11 August 1997 Prime Minister Bill Skate announced that the investigation would be expanded. The Special Rapporteur has contacted the Government of Papua New Guinea requesting information concerning those events and hopes to be informed of the conclusions of the commission of inquiry.

99. Although the commission's conclusions are not yet known, the available information concerning the crisis in Papua New Guinea suggests that it was triggered by the implementation of the contract between the Government of Papua New Guinea and the private security company Sandline International. For the armed forces and the population, the presence of foreign soldiers recruited by a foreign company, which was responsible not only for training but also for commanding military operations in an internal armed conflict, thereby subjecting the country's military leaders to its orders, and which received for the initial period of the contract (three months) US$ 36 million as well as a promise of participation in the company Bougainville Cooper Limited was considered to be an act that violated sovereignty and the right to self-determination. The sheer perception of being faced with a mercenary presence under contract to the Government via a private company was without any doubt a clearly expressed fact in the indignation of both the armed forces and the population of Papua New Guinea. In addition, the use of mercenaries was noted by the international community.

VI. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

100. By resolution 44/34 of 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Pursuant to article 19, the International Convention is to

enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General. At the time this report was written, only 14 States had completed the process of expressing their willingness to be bound by the International Convention: Azerbaijan, Barbados, Belarus, Cameroon, Cyprus, Georgia, Italy, Maldives, Saudi Arabia, Seychelles, Suriname, Togo, Turkmenistan and Ukraine, while the following 10 States had signed the International Convention: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay and Yugoslavia.

101. The International Convention confirms the legal nature of the resolutions and declarations of United Nations bodies condemning mercenary activities and it expands international regulation of the question, such regulation being at present essentially limited to article 47 of the 1977 Protocol I Additional to the Geneva Conventions of 1949 and the 1977 OAU Convention for the Elimination of Mercenarism in Africa. The entry into force of the International Convention will contribute to the accurate identification of situations involving mercenaries, the effective prosecution and punishment of offenders and the clear determination of jurisdiction in each case, and will help to facilitate extradition procedures and preventive cooperation among States. It may also be recalled that General Assembly resolution 52/112 requested the Secretary-General to invite Governments to make proposals towards a clearer definition of mercenaries.

VII. CONCLUSIONS

102. Mercenary activities are a form of violence, condemned by United Nations bodies, which have been used to hamper the exercise of the right to self-determination of peoples and to violate human rights. Mercenaries tend to be present mainly in international or internal armed conflicts, where they offer their services to one or more parties to the conflict in exchange for payment, causing serious damage to the people and territories that are victims of their actions.

103. Mercenary activities not only affect the self-determination of peoples but may also be considered as leading to serious crimes, such as attempts on the lives of selected persons, terrorist attacks against installations and drug and arms trafficking. All these acts usually involve serious violations of human rights.

104. Since mercenary activities and the conduct of the mercenary per se can seriously impair the enjoyment of human rights, the self-determination of peoples, the stability of constitutionally established Governments and the maintenance of international peace and security, mercenary activity and conduct must be clearly and unequivocally banned.

105. The fact that existing international provisions relating to mercenaries raise problems, contain gaps or are ambiguous reduces their legal effectiveness. For this reason they should be thoroughly revised, supplemented, made more specific, references added to new mercenary methods and brought up to date.

106. Mercenarism is not classified as a separate crime in the legislation of most countries. This omission could facilitate the use of the State's territory to recruit and train mercenaries and to finance their activities. Moreover, the fact that the extradition of mercenaries is not provided for could facilitate their perpetration of criminal acts and provide them with impunity.

107. Some events that have taken place in countries in Africa, Europe and Oceania in recent years indicate not only that mercenary activities still exist but that their nature is changing. The establishment of companies to sell military advisory, training and security services to countries in return for money and mining and energy concessions, in particular, may, in addition to the problems such contracts pose for the sovereignty of the States that conclude them, lead to the recruitment of mercenaries who will become involved in internal affairs, thus representing a threat to the people exposed to their activities.

108. By the very nature of the operations contracted for and the contractual terms agreed to, military advisory and assistance companies can come to take control of the country's security and thereby exert considerable political influence over production and economic, financial and commercial activities. Their influence could be considerable in areas of decisive importance for the economic activity of the country in which they operate, and could in turn promote relations of dependence.

109. If the type of company described in the preceding paragraph becomes widespread, the concept of security that the international community has had until now and the responsibility of each State to be accountable for and to guarantee, through its police forces, that each individual is able to exercise his rights and freedoms as a citizen will have been superseded by a new concept.

110. The consolidation of these companies depends directly on the extent to which the international system, the great Powers and States themselves agree to entrust the solution of regional, bilateral and internal armed conflicts, as well as the Governments of countries with problems, to private military security and assistance companies.

111. According to this new concept, it would appear that any State is at liberty to buy military advisory and assistance and security services on the international market from organizations composed of persons of various nationalities, united by their military function and their ability to control, punish and impose the order desired by the Government which hires them, regardless of the cost in lives and loss of sovereignty, in exchange for money and natural resources.

112. The increase in companies engaged in the international sale of security and military advice and assistance could significantly alter the currently accepted concept of mercenary activity. Mercenary activity would no longer be considered as necessarily unlawful, illegitimate or illegal, while concepts such as that of State sovereignty and the obligations of a State towards its people and towards the observance and guarantee of the enjoyment of human rights would be tremendously and dangerously relativized.

113. Despite the fact that more than eight years have passed since its adoption by the General Assembly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has been ratified by only 14 States. The delay in its entry into force of itself encourages the continuation of this criminal activity.

VIII. RECOMMENDATIONS

114. Considering that mercenary activities have become diversified and are undergoing a transformation, acquiring characteristics that make them far more of a threat to the enjoyment of human rights, the Commission on Human Rights should reaffirm its condemnation of these activities and, additionally, suggest to all States that they should incorporate practical measures in their national legislation to prohibit the use of their territory for the recruitment, training, assembly, transit and financing and use of mercenaries.

115. The united front which the international community should present in acting against mercenary activities is weakened by the existence of gaps and inadequacies in national legislation as well as international instruments which are used to conceal mercenary activities and even to condone the recruitment and employment of mercenaries. It is therefore recommended that mercenary activity should be treated in every respect as an unlawful and prosecutable act and a continuing offence. Given the legal gaps and inadequacies which permit the existence of mercenaries whose activities can pass as normal, it is recommended that the Commission on Human Rights should propose that the States Members of the United Nations should consider adopting legislation to prohibit mercenary activity and the use of national territory for such unlawful acts.

116. In view of the harm which the delay in the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries is causing at the regulatory level, it is recommended that the Commission on Human Rights should appeal to States for understanding so that they will decide to ratify or accede to the Convention and bring it rapidly into force.

117. In what appears to be a new international trend, legally registered companies are providing security and military advisory and training services to the armed forces and police of legitimate Governments. There have been complaints that some of these companies go beyond advisory and instruction work, becoming involved in military combat and taking over political, economic and financial matters in the country served. It is therefore recommended that the evolution of these companies, the relevant legislation of States and the conditions under which States agreed to conclude contracts with such companies should be monitored closely. It needs to be assessed whether the security and internal order of a State which has lost part or all of its capacity to keep order should henceforth be left to the action of specialized companies which will take charge of its security.

118. If, following the conclusion of contracts with private companies providing security services, the situation clearly deteriorates and popular rejection becomes apparent, the investigation should be carried further so that the Commission on Human Rights can have sufficient information to

determine the impact of the relationship between private security companies and the countries using their services, particularly from the standpoint of the exercise of authority by the State, self-determination, political stability, the protection of natural resources and conditions for the maintenance of peace and respect for human rights.

119. The Commission on Human Rights should call for a study on ways of reinforcing international prevention, action and intervention machinery in order to strengthen the exercise of human rights and promote the rule of law in countries threatened or weakened by armed conflicts, thereby ensuring that the purpose of hiring private companies of this nature, if indispensable, is solely to obtain technical and professional advice on military matters or police protection, within the legal framework expressly laid down.

120. On the basis of the facts and analysis presented in this report, it is recommended that the Commission on Human Rights should consider keeping this subject under review as a matter of priority with a view to formulating proposals for a better legal definition of private companies that offer security services, precluding the presence of mercenaries, and safeguarding the sovereignty of States and their non-transferable responsibility of matters of law enforcement and internal security.

- - - - -